

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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STEPHANIE C.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY AND J.C.,  
*Appellees.*

No. 2 CA-JV 2015-0054  
Filed August 11, 2015

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION.

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. P. Juv. Ct. 103(G).

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Appeal from the Superior Court in Pima County  
No. JD200288  
The Honorable Richard E. Gordon, Judge

**AFFIRMED**

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COUNSEL

Nuccio & Shirly, P.C., Tucson  
By Salvatore Nuccio  
*Counsel for Appellant*

Mark Brnovich, Arizona Attorney General  
By Erika Z. Alfred, Assistant Attorney General, Tucson  
*Counsel for Appellee Department of Child Safety*

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Pima County Office of Children's Counsel  
By Sarah Richelson, Tucson  
*Counsel for Appellee J.C.*

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**MEMORANDUM DECISION**

Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly<sup>1</sup> concurred.

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H O W A R D, Judge:

¶1 Stephanie C. appeals from the juvenile court's order terminating her parental rights to her daughter J., born in March 2014, on time-in-care grounds and on the basis that her rights to another child had been terminated in the preceding two years for the same cause. *See* A.R.S. § 8-533(B)(8)(b), (10). Finding no error, we affirm.

¶2 "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009). J. was removed from Stephanie's care following her birth after she and J. tested positive for marijuana. The Department of Child Safety (DCS)<sup>2</sup> immediately filed a dependency petition, citing Stephanie's substance abuse history, unstable housing and employment, and the fact that her

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<sup>1</sup>The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

<sup>2</sup>The Department of Child Safety (DCS) is substituted for the Arizona Department of Economic Security in this decision. *See* 2014 Ariz. Sess. Laws, 2nd Spec. Sess., ch. 1, § 20.

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parental rights to two other children had been terminated.<sup>3</sup> The juvenile court found J. dependent in May 2014.

¶3 Although DCS offered services including substance abuse treatment, Stephanie did not participate in any of them until late September. Nor had she participated in services in a dependency proceeding related to another child. In late September, she provided samples for drug testing as required by her case plan. Although those samples tested positive for methamphetamine and marijuana, Stephanie continued to provide samples without any additional positive tests and enrolled in an outpatient treatment program.

¶4 In early October, concluding she was not in compliance with her case plan, the juvenile court ordered J.'s counsel to file a motion to terminate Stephanie's parental rights. That motion alleged Stephanie's parental rights should be terminated pursuant to § 8-533(B)(8)(b) and (10). While the motion was pending, Stephanie participated in her case plan, including attending parenting and substance abuse classes. After a contested hearing, which was completed in February 2015, the court found that termination was warranted on both alleged grounds and that termination of Stephanie's parental rights was in J.'s best interests.<sup>4</sup> This appeal followed.

¶5 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and finds by a preponderance of the evidence that termination is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303. That is, we will not reverse a termination order for insufficient

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<sup>3</sup>Stephanie's parental rights to a third child were terminated in May 2014.

<sup>4</sup>The juvenile court also terminated the parental rights of J.'s father. He is not a party to this appeal.

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evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. See *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶6 To conclude that termination of Stephanie's parental rights to J. was appropriate pursuant to § 8-533(B)(8)(b), the juvenile court was required to find that she had been in court-ordered, out-of-home placement "for a cumulative total period of six months or longer" and that Stephanie had "substantially neglected or wilfully refused to remedy the circumstances" causing J. to be in an out-of-home placement. Stephanie first argues the court erred in terminating her parental rights on time-in-care grounds because she had been successfully participating in services since October 2014.

¶7 As Stephanie correctly points out, a parent who has made "appreciable, good faith efforts to comply with remedial programs" provided by DCS "will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement" even if the parent has not "completely overcome" the issues causing the placement within the statutory timeframe. *In re Maricopa Cnty. No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). But, as the juvenile court noted, Stephanie did not begin meaningful participation in services until approximately six months after J. had been removed from her custody. Such a long delay before participation in services, even if that recent participation appears to be successful, supports a finding that a parent has not made a good-faith effort within the statutory time frame and thus that termination of parental rights is warranted. *Id.* at 577, 869 P.2d at 1230. "Leaving the window of opportunity for remediation open indefinitely is not necessary, nor do we think that it is in the child's or the parent's best interests." *Id.*

¶8 Citing *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 152 P.3d 1209 (App. 2007), Stephanie additionally claims the juvenile court erred by terminating her parental rights because, at the time of termination, she "was not substantially neglecting to engage in services nor was she willfully refusing to do them." But Stephanie misconstrues the relevant portion of *Marina P.* We concluded in that

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case that “circumstances,” as used in § 8-533(B)(8)(a), refers to the “‘circumstances existing at the time of the severance’ that prevent a parent from being able to appropriately provide for his or her children.” *Id.* ¶ 22, *quoting Maricopa Cnty. No. JS-8441*, 175 Ariz. 463, 468, 857 P.2d 1317, 1322 (App. 1993).

¶9 Thus, the question is not whether Stephanie was participating in services at the time of termination, but instead whether she had, by that time, remedied the circumstances that prevented her from parenting her child. *See id.* Those circumstances, as the juvenile court noted, included Stephanie’s drug abuse. We can find no abuse of discretion in the court’s determination that Stephanie’s brief recent sobriety did not establish she had resolved her substance abuse issues at the time of termination, particularly given that she had not completed any substance abuse programs and had a significant history of substance abuse.

¶10 At their core, Stephanie’s arguments ask us to reweigh the evidence. “The juvenile court, not this court, is ‘in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings.’” *Bennigno R. v. Ariz. Dep’t of Econ. Sec.*, 233 Ariz. 345, ¶ 31, 312 P.3d 861, 867 (App. 2013), *quoting In re Pima Cnty. Juv. Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). “Consequently, we will not reweigh the evidence or substitute our judgment for that of the juvenile court.” *Id.* And, because we conclude the juvenile court properly found termination was warranted pursuant to § 8-533(B)(8)(b), we need not address Stephanie’s argument related to termination based on subsection (B)(10). *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

¶11 We affirm the juvenile court’s order terminating Stephanie’s parental rights to J.